[IT] AGCOM releases regulation governing the promotion of European works

IRIS 2019-3:1/21

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On 12 December, 2018, by way of Resolution No. 595/18/CONS, AGCOM issued the Regulation governing programming and investment obligations for the promotion of European works and works by independent producers ("the Regulation"). The Regulation was adopted pursuant to Article 44-quinquies of the AVMS Code (Legislative Decree No. 177 of 31 July, 2005), as recently amended by Legislative Decree No. 204 of 7 December, 2017 as part of the so-called Franceschini Reform (Law No. 220 of 14 November, 2016). On 22 January, 2019, the Regulation was amended by AGCOM Resolution No. 24/19/CONS to take into account the modifications provided for - in the meanwhile - by the 2019 Budget Law (Law No. 145 of 30 December, 2018), which had delayed the entry into force of some of the obligations (see IRIS 2019-2/1).

The Regulation introduces some specific provisions in addition to the general content of the AVMS Code. First of all, the Regulation provides for the definition of the term "independent producer" and establishes new sub-quotas applicable to private broadcasters. Broadcasters shall reserve at least 3% of the so-called eligible hours for content targeting minors and at least 10% of the eligible hours for programmes designed to be viewed by children and adults. Both sub-quotas are calculated on an annual basis. The notion of eligible hours includes 'the overall amount of broadcasting hours and hour fractions, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping'.

Another new provision concerns the subjective scope of application of the sub-quotas for the promotion of works of Italian original expression which are binding on private broadcasters. In fact, pursuant to the AVMS Code, the latter must reserve a quota for cinematographic works of Italian original expression, produced anywhere by independent producers. This quota amounts to 3.2% but will be increased to 3.5% between 1 July and 31 December, 2019, to 4% for 2020 and to 4.5% from 2021 onwards. However, the Regulation provides that these sub-quotas shall not apply to catalogues that have broadcast less than 52 cinematographic works in the course of the previous year. This amount excludes reruns, with the threshold fixed at 104 transmissions and re-transmissions of cinematographic works.

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Furthermore, with respect to the investment obligations applicable to broadcasters, the Regulation clarifies that the notion of “production activities” is meant to include both the promotion and the distribution of works, on the condition that the relevant agreements contain mechanisms ensuring the remuneration of producers throughout the different release windows. As a result, the expenses and investments incurred for the distribution of works must also be considered when assessing compliance with the relevant investment obligations.

Autorità per le garanzie nelle comunicazioni, All. B, Modifiche al regolamento in materia di obblighi di programmazione ed investimento a favore di opere europee e di opere di produttori indipendenti di cui alla delibera n. 595/18/CONS

https://www.agcom.it/documents/10179/13446572/Allegato+25-1-2019+1548410333594/0a5e9c51-a64e-4a65-b0a9-3c40f3331f56?version=1.0

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